

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
ROANOKE DIVISION

JUL 15 2013

JULIA C. DUNCAN, CLERK  
BY:  DEPUTY CLERK

UNITED STATES OF AMERICA

v.

ALPHONSO BUSTER GILBERT,

Defendant.

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Case No. 7:03-cr-00109

**MEMORANDUM OPINION**

By: James C. Turk

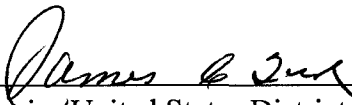
Senior United States District Judge

The court has received a document from defendant, Alphonso Buster Gilbert, entitled "Judicial Notice, in which he asserts his intention to pursue a claim for relief under 28 U.S.C. § 2255, based on a recent decision by the United States Supreme Court, Alleyne v. United States, 133 S. Ct. 2151 (2013). After reviewing the record, I will construe Gilbert's submission as a § 2255 motion, direct the clerk to docket it as such, and summarily dismiss it as successive under § 2255(h).

Gilbert has already pursued a § 2255 motion regarding the same judgment. See Gilbert v. United States, Civil Action No. 7:06CV00740, 2007 WL 2463261 (W.D. Va. 2007), appeal dismissed, 271 F. App'x 303 (4th Cir. 2008) (unpublished). This court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit. § 2255(h). Gilbert offers no indication that he has obtained certification from the court of appeals to file a second or successive § 2255 motion. Therefore, the court will direct the clerk's office to docket Gilbert's current submission as a § 2255 motion, which will be summarily dismissed as successive. An appropriate order will issue this day.

The Clerk is directed to send copies of this memorandum opinion and accompanying

**ENTER:** This 15<sup>th</sup> day of July, 2013.

  
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Senior United States District Judge